

Members

Rep. David Orentlicher, Chairperson  
Rep. Scott Pelath  
Rep. Vernon Smith  
Rep. Jonathan Elrod  
Rep. Ralph Foley  
Rep. Amos Thomas  
Sen. Richard Bray, Vice-Chairperson  
Sen. Brent Steele  
Sen. Brent Waltz  
Sen. Karen Tallian  
Sen. John Broden  
Sen. Earline Rogers



## BOWSER COMMISSION

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### MEETING MINUTES<sup>1</sup>

**Meeting Date:** September 24, 2007  
**Meeting Time:** 1:00 P.M.  
**Meeting Place:** State House, 200 W. Washington St.,  
Room 233  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 2

**Members Present:** Rep. David Orentlicher, Chairperson; Rep. Vernon Smith; Rep. Jonathan Elrod; Rep. Ralph Foley; Rep. Amos Thomas; Sen. Karen Tallian; Sen. John Broden; Sen. Earline Rogers.

**Members Absent:** Rep. Scott Pelath; Sen. Richard Bray, Vice-Chairperson; Sen. Brent Steele; Sen. Brent Waltz.

Rep. Orentlicher convened the meeting at 1:10 p.m.

The Commission members approved the minutes of the August 17<sup>th</sup> meeting as the first order of business.

Rep. Orentlicher recognized Mr. Ron Honberg, Director of Policy and Legal Affairs for the National Alliance on Mental Illness (NAMI).

In a slide presentation (see Attachment A), Mr. Honberg provided information to the members about key Supreme Court decisions involving mentally ill defendants who face the death penalty, the physiological differences between the brains of persons who have been diagnosed and not diagnosed with schizophrenia, the outcomes of mentally ill persons in the criminal justice system, and a proposal by the American Bar Association (ABA) to address the problems of mentally ill defendants in death penalty cases. The proposal by the ABA is available at <http://www.abanet.org/disability/docs/DP122A.pdf>.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

During a discussion with members, Mr. Honberg made the following points:

- He suggested that if a prosecuting attorney files a request for the death penalty, the court hold a pretrial hearing to determine if the defendant is mentally ill and competent to stand trial.
- Death penalty defendants who volunteer to be executed are often mentally ill.
- Civil commitment laws vary by state but may be influenced in part by federal statutes and case law.
- There are two approaches to excluding defendants from the death penalty. NAMI advocates a “categorical approach” where any defendant with an identifiable mental illness is excluded from receiving a death sentence. The other approach, recommended by the American Bar Association, specifies that the defendant has to present certain symptoms and demonstrate that these symptoms actually affect the defendant.

Rep. Orentlicher recognized Professor Joel Schumm, Indiana University School of Law. A copy of his slide presentation is included as Attachment B.

Responding to a question, Professor Schumm suggested that during a death penalty trial the court should use two to four mental health experts to determine whether a person is fit for trial.

He suggested that the General Assembly create a narrow definition for mental illness that could be used to exempt certain defendants from being sentenced to death.

He suggested that the General Assembly could also improve the current death penalty statute by exempting a defendant who is guilty but mentally ill from being given a death sentence.

He indicated that in most death penalty cases, the most controversy is not whether a defendant is guilty but whether the death penalty is suitable given the crime that was committed.

He indicated that no state has currently adopted model legislation proposed by the ABA.

The final witness to appear before the Commission was Kathy Bayes, executive director of the Fort Wayne chapter of the NAMI. She described the background of her husband, who was diagnosed with an obsessive-compulsive disorder. While he has an undergraduate degree from Duke University and a graduate degree from Yale Law School, he has not been able to practice law and is on disability. In recent years, he has been able to actively participate in NAMI functions because of a new class of drugs that has become available for persons with mental illness.

Rep. Orentlicher concluded the meeting by announcing that the next meeting of the Commission is scheduled for October 16 at 9:30 a.m. He indicated that he would attempt to circulate a draft proposal for the members to consider before the next meeting.

The meeting was adjourned at 3:20 p.m.